



COMPLIANCE

July 3, 2014

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
2014 JUL 14 AM 11:08
OFFICE OF GENERAL
COUNSEL

Re: Mark Takai for Congress and MUR 6843

Dear Mr. Jordan,

Enclosed in the following sections is Mark Takai for Congress's (the "Committee") official response to the above referenced Matter Under Review, and a statement in support that "No Action" is taken by the Commission. Benjamin White, hereafter referred to as the "Petitioner," alleged multiple violations of FEC regulations in his letter dated June 12, 2014. The Committee contends that none of the offenses the Petitioner outlined were in fact violations of the FEC Act. The following sections outline the alleged violations and demonstrates that in each case, no violation occurred, and as such, the Commission should take no further action on MUR 6843.

COUNT 1 – VIOLATION OF THE HATCH ACT:

The Petitioner alleged the Committee made "illegal solicitations of a federal employee" in violation of the Hatch Act, 5 U.S.C. § 7321 – 7326. While the Hatch Act is regulated by the Office of Special Counsel, U.S. Merit Systems Protection Board, and thus outside the jurisdiction of the Federal Election Commission, the Committee affirms that no violation occurred.

COUNT 2 – FAILURE TO UTILIZE EMAIL DISCLAIMER(S):

The Petitioner alleges that on two occasions, the Committee failed to include a disclaimer in an email message, and as a result, violated FEC regulations. As evinced by the Petitioner, the email exchange(s) in question included only the Petitioner and the candidate. Therefore in accordance with 11 CFR 110.11(a), these exchanges did not constitute a "public communication" as defined by 11 CFR 100.26, 100.27 and 100.28 (below). As such, no further action by the Commission should be taken on this matter.

"Public communications include electioneering communications and any other form of general public political advertisement, including communications made using the following media:

- Broadcast, cable or satellite;
- Newspaper or magazine;
- Outdoor advertising facility;
- Mass mailing (more than 500 substantially similar mailings within 30 days);
- Phone bank (more than 500 substantially similar calls within 30 days); and
- Communications placed for a fee on another person's website."

COUNT 3 – FAILURE TO UTILIZE A DISCLAIMER IN TELEPHONIC SOLICITATIONS:

The Petitioner alleges the Committee did not disclose necessary statements required for a telephonic political campaign solicitation. The Petitioner notes that the conversation occurred between himself and the candidate and points to page nine of the FEC publication, "Special Notices on Political Ads and Solicitations." However, because the conversation did not constitute a public communication outlined above and defined by 11 CFR 100.26, 100.27 and 100.28, it was not necessary for the Committee to include the disclaimer. Thus the Committee contends that no further action should be taken by the Commission in this matter.

For the foregoing reasons, it is apparent that no violation has been committed by the Committee. The Committee always has and will continue to include appropriate disclaimer notices on all print, broadcast, web, and telephonic communications in accordance with 11 CFR 110.11(a). The Commission should take "No Action" relative to the unsupported and faulty allegations outlined in the Petitioner's Complaint in MUR 6843.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin D. Larkin", written in a cursive style.

Erinn D. Larkin
1 Park Row, Suite 5
Providence, RI 02903
CFO – Compliance, LLC
Compliance Consultant for Respondent

MUR # 6843

BENJAMIN O. WHITE

Pearl City, Hawaii 96782

Ph:

Email:

Ms. Florence Nakakuni
United States Attorney, District of Hawaii
United States Department of Justice
United States Attorney's Office
300 Ala Moana Blvd., #6-100
Honolulu, Hawaii 96850

OFFICE OF
COUNSEL

2015 JUN -4 PM 16:09

October 21, 2014

Dear Ms. Nakakuni,

On May 27, 2014 a letter was sent to you and your office requesting your review of possible violations of federal law in accordance with illegal solicitations of campaign contributions by Mark Takai, a democratic candidate running for Hawaii's Congressional Office. At that point in time, your office in conjunction with a representative from the FBI, made the determination that jurisdiction in this matter belonged to the Federal Elections Commission ("FEC").

Nevertheless, the nature of this matter has changed with the discovery of new and relevant information. The discovery new information suggests numerous "violations of privacy" by Mark Takai. The "Privacy Act" of 1974 (5 U.S.C. § 552a) has a "Criminal Penalties" section which is applicable to the new information and falls within your jurisdiction.

The attached supporting facts allege, and/or aver Mark Takai knowingly, and/or willfully accessed the "Army Knowledge Online", ("AKO"), a "For Official Use Only", ("FOUO") government website, and/or system, and/or directory of personal information under false pretenses to record for the personal information of thousands of soldiers for the purpose of

monetary, and/or personal gain. I am confident that an investigation by your office and the Department of Justice will provide additional evidence which supports Mark Takai's violations of the Privacy Act, resulting in substantiated federal charges and criminal prosecution.

Thank you for your consideration and assistance in this matter. Please feel free to contact me via phone or email at the addresses shown above. I look forward to hearing from you.

Respectfully Submitted,



BENJAMIN O. WHITE

DECLARATION

I, BENJAMIN O. WHITE, declare, verify, certify, and state under the penalty of perjury that the foregoing is true and correct.

Dated: Daegu, Republic of Korea ("ROK"), October 21, 2014,



BENJAMIN O. WHITE

Issues:

1. **Violations of Privacy**— LTC Kyle Mark Takai is both a politician and HIARNG officer running for congressional office. LTC Takai abused his access to the Army Knowledge Online, ("AKO") website to use the profiles and private contact information contained within an official government FOUO system to contact active duty members and subordinates for money and personal gain. LTC Takai's culpable actions are a violation of the "Privacy Act" subject to both criminal and civil penalties under 5 U.S.C. Sec. 552.
 - a. **Supporting Fact #1** – The Federal Elections Commission ("FEC") website shows 35 active duty soldiers who were contacted as a result of this violation of privacy. The proof of this contact is their contribution to LTC Takai's political campaign for U.S. Congress. More than eleven of these soldiers will attest LTC Takai called them repeatedly at the number listed in AKO to ask for money.
 - b. **Supporting Fact #2** – LTC Takai called CPT Benjamin White on his personal cell to ask for money. CPT White's cell is not a listed number. CPT White lists his cell on two government FOUO systems: AKO and the Global Enterprise Email Server. CPT White has NEVER given his cell phone number to LTC Takai.
 - c. **Supporting Fact #3** – The illicit use of AKO information and the violations of privacy by LTC Kyle Takai (name shown in AKO) were not limited to a geographic region. The FEC Website shows soldiers who were contacted with AKO profiles in such locations as Colorado, and Virginia. The violations of privacy involving AKO were system wide.
 - d. **Supporting Fact #4** – The FEC website shows 35 active duty soldiers who were called by LTC Takai using AKO profiles and contact information. There is an "unknown factor" of consideration because it is not known how many service members were called by LTC Takai using their profile and contact information from AKO and are not listed on the FEC website. The number could be in the thousands because AKO contains the contact information and profiles of more than 400,000 service members. This breach of information by an O5 makes the Department of the Army liable to civil action under 5 U.S.C. Sec. 552. It also violates DoD Directive 5400.11-R, (14 May 2007), Department of Defense Privacy Program.

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case the court shall determine the matter de novo.

(2) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) CRIMINAL PENALTIES. Any officer or employee of an agency who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure

of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however*, That if any individual is denied any right, privilege, or benefit that

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